IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA EASTERN DIVISION No. 4:10-CR-6-D

JERRY WAYNE RYAN,)
Petitioner,)
v.) ORDER
UNITED STATES OF AMERICA,)
Respondent.)

On January 8, 2016, Jerry Wayne Ryan ("Ryan" or "petitioner"), a federal prisoner proceeding pro se, filed a petition for a "Writ of Error Audita Querela." Pet. [D.E. 129]. Ryan expressly disclaims seeking relief under 28 U.S.C. § 2255. See id. As explained below, the court denies the petition.

On June 22, 2010, pursuant to a written plea agreement, Ryan pleaded guilty to conspiracy to manufacture and distribute 500 grams or more of a mixture containing methamphetamine [D.E. 66, 67]. On March 16, 2011, the court sentenced Ryan to 276 months' imprisonment [D.E. 108]. Ryan did not appeal his criminal judgment or file a motion under 28 U.S.C. § 2255.

On January 8, 2016, Ryan filed a petition for a writ of error audita querela under the All Writs Act [D.E. 129]. Ryan argues that counsel was ineffective by failing to investigate his case sufficiently before his guilty plea and that, in light of McFadden v. United States, 135 S. Ct. 2298 (2015), his guilty plea is deficient. See id. 2-7.

A "writ of audita querela is not available to a petitioner when other remedies exist, such as a motion to vacate under 28 U.S.C. § 2255." Alonzo v. United States, 368 F. App'x 467, 467 (4th Cir. 2010) (per curiam) (unpublished) (alterations, citation, and quotation omitted); see, e.g., Ortiz

v. United States, 555 F. App'x 261, 262-63 (4th Cir. 2014) (per curiam) (unpublished); In re Webb,

491 F. App'x 424, 424-25 (4th Cir. 2012) (per curiam) (unpublished); United States v. Sessoms,

488 F. App'x 737, 738 (4th Cir. 2012) (per curiam) (unpublished). Ryan may file a motion under

28 U.S.C. § 2255. Whether such a motion would be timely is an issue for another day. Thus, the

court dismisses Ryan's petition.

In sum, the court DENIES Ryan's petition for a writ of error audita querela [D.E. 129]. The

clerk shall close the case.

SO ORDERED. This 4 day of October 2016.

AMES C. DEVER III

Chief United States District Judge